IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6903 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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JILUBHAI D PARMAR - Petitioner
Versus
SARPANCH & 1 - Respondents

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Appearance :
MR UM SHASTRI for Petitioner(s) : 1,
(MR DN PATEL) for Respondent(s) : 1,
MR VIJAY H PATEL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/04/2007

ORAL JUDGMENT

1. By way of this petition, under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate order quashing and setting aside the order passed by Respondent No.2 dated 22.02.1996 by

which the Resolution No. 20 dated 24.07.1995 passed by the Ranpur Gram Panchayat, by which the petitioner was made permanent has been permanently suspended / stayed and further order has been passed to recover the salary paid to the petitioner in the pay scale of Rs. 750 – 940 from 01.08.1995 to 22.02.1996. It is further prayed for an appropriate direction or order preventing the respondent to implement the order dated 15.02.1996 Annexure – G to the petition.

2. Shri Uday Shashtri, learned Advocate appearing for the petitioner has submitted that the petitioner will be restricting his claim and /or prayer in the present Special Civil Application only qua the direction issued by the Taluka Development Officer, Dhanduka by order dated 22.02.1996 by which it was ordered to recover the salary already paid to the petitioner in the pay scale of Rs. 750 – 940 paid from 01.08.1995 till the impugned order came to be passed. Accordingly, so far as other prayers are concerned, the present Special Civil Application is dismissed as having not pressed. Therefore, the only question requires to be considered by this Court is with regard to the order of recovery of the salary salary already paid to the petitioner from 01.08.1995 in the pay scale of Rs. 750 – 940.

3. It is required to be noted that the Resolution came to be

passed in the year 1995 by which the petitioner was made permanent and the petitioner was in fact paid salary in the pay scale of Rs. 750 – 940 and the said Resolution came to be suspended by impugned order dated 22.02.1996. Thus the petitioner will not be entitled to any salary in the pay scale of Rs. 750 – 940 by order dated 22.02.1996. It is required to be noted that in fact by subsequent order dated 28.02.1996, passed by the Ranpur Gram Panchayat, the petitioner was again continued as daily wager and it is reported that the petitioner is still working as daily wager.

4. However, so far as order of recovery made by the Taluka Development Officer from 01.08.1995 towards salary already paid to the petitioner in the pay scale of Rs. 750 – 940 is concerned, in view of the fact that the petitioner was already paid salary pursuant to the Resolution No. 20, which came to be suspended by order dated 22.02.1996 and considering the fact that the petitioner has served as Peon, direction issued by the Taluka Development Officer with regard to the recovery of salary already paid to the petitioner in the pay scale of Rs. 750 – 940 with effect from 01.08.1995 is required to be quashed and set aside.

5. For the reasons stated above, the petition succeed in part. Direction issued by the Taluka Development Officer with regard to the

recovery of the salary paid to the petitioner from 01.08.1995 till 22.02.1996 in the pay scale of Rs. 750-940 is hereby quashed and set aside and the rest of the order dated 22.02.1996 passed by the Taluka Development Officer by which Resolution No. 20 dated 24.07.1995 of the Ranpur Gram Panchayat by which the petitioner was appointed as Peon on permanent basis is hereby confirmed. Rule is made absolute to the aforesaid extent. No costs.

[M.R.Shah, J.]

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